

## CHAPTER NO. 873

## SENATE BILL NO. 3489

**By Ketron, Beavers, Black, Bowers, Bryson, Burchett, Burks, Cohen, Cooper, Crowe, Crutchfield, Finney, Ford, Fowler, Harper, Haynes, Henry, Herron, Jackson, Kilby, Kurita, Kyle, McLeary, McNally, Miller, Norris, Curtis S. Person, Jr., Ramsey, Southerland, Tracy, Williams, Woodson, Mr. Speaker Wilder**

**Substituted for: House Bill No. 3137**

**By DuBois, Gresham, Campfield, Hensley, Niceley, Curtis Johnson, Bo Watson, Lynn, Maggart, Harwell, Sargent, Hill, Crider, Eldridge, Miller**

AN ACT to amend Tennessee Code Annotated, Title 56 and Title 67, to enact the "Health Savings Account Act".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Health Savings Account Act".

SECTION 2. As used in this act:

(a) "Eligible individual" means the individual taxpayer, including employees of an employer who contributes to health savings accounts on the employees' behalf, who:

(1) Must be covered by a "high deductible health plan" individually or with his or her dependent as defined in this act;

(2) May not be covered under any health plan that is not a high deductible health plan, except for:

(A) coverage for accidents, disability, dental care, vision care, and long-term care;

(B) workers' compensation insurance;

(C) insurance for a specified disease or illness;

(D) insurance paying a fixed amount per day per hospitalization;  
and

(E) coverage for tort liabilities or liabilities relating to ownership or use of property; and

(3) Establishes or on whose behalf, the health savings account is established.

(b) "Deductible" means the total deductible for an eligible individual and all the dependents of that eligible individual for a calendar year.

(c) "Dependent" means the spouse or child of the eligible individual as defined in Section 152 of the Internal Revenue Code subject to any additional modifications imposed by Section 223(d)(2) of the Internal Revenue Code.

(d) "Qualified medical expense" means an expense paid by the taxpayer for medical care described in Section 213(d) of the Internal Revenue Code.

(e) "High deductible health plan" means a health plan with:

(1) In the case of self-only coverage, an annual deductible which is not less than one thousand dollars (\$1,000), and the sum of the annual deductible and other out-of-pocket expenses required to be paid under the plan for covered benefits does not exceed five thousand one hundred dollars (\$5,100), or such other amounts for an annual deductible and out-of-pocket expenses established in accordance with Section 6.

(2) In the case of family coverage, an annual deductible of not less than two thousand dollars (\$2,000), and the sum of the annual deductible and other annual out-of-pocket expenses required to be paid under the plan for covered benefits does not exceed ten thousand two hundred dollars (\$10,200), or such other amounts for an annual deductible or out-of-pocket expenses established in accordance with Section 6.

(3) A plan shall not fail to be treated as a high deductible plan by reason of failing to have a deductible for preventive care or, in the case of network plans, for having out-of-pocket expenses or annual deductibles for services provided outside the network that exceed the limitations in this section.

(f) "Health savings account" or "account" means a trust or custodian established pursuant to a health savings account program exclusively to pay the qualified medical expenses of an eligible individual or his or her dependents, but only if the written governing instrument creating the account meets the following requirements:

(1) Except in the case of a rollover contribution, no contribution will be accepted:

(A) unless it is in cash; or

(B) to the extent such contribution, when added to the previous contributions to the account for the calendar year, exceeds one hundred percent (100%) of the eligible individual's deductible, or two thousand six hundred dollars (\$2,600) for an individual, or five thousand one hundred fifty dollars (\$5,150) per family (or such dollar amounts as established in accordance with Section 6), whichever is lower;

(2) The trustee or custodian is a bank, an insurance company, or another person approved by the U.S. Department of Treasury;

(3) No part of the trust assets will be invested in life insurance contracts;

(4) The assets of the account will not be commingled with other property except as allowed for under individual retirement accounts;

(5) Eligible individual's interest in the account is nonforfeitable; and

(6) Eligible individuals who have attained age fifty-five (55) before the end of the year may make additional catch-up contributions into the account in the amount determined in accordance with the following table:

2005	\$	600
2006	\$	700
2007	\$	800
2008	\$	900
2009 and thereafter	\$	1,000

(g) "Health Savings Account program" or "program" means a program that includes all of the following:

(1) The purchase by an eligible individual or by an employer of a high deductible health plan; and

(2) The contribution into a health savings account by or on behalf of an eligible individual or on behalf of an employee by his or her employer. The total annual contribution may not exceed the amount of the plan's higher deductible or the amounts listed in subsection (f)(1)(B).

SECTION 3. (a) For taxable years beginning after 2007, contributions may be made into a health savings account by or on behalf of a resident of Tennessee, pursuant to Section 2(f).

(b) Except as provided in Section 5, principal contributed to and interest earned on a health savings account and money reimbursed to an eligible individual or an employee for qualified medical expenses are exempt from taxation under Tennessee Code Annotated, Title 67, Chapter 2.

SECTION 4. The trustee or custodian shall utilize the funds held in a health savings account solely for the purpose of paying the qualified medical expenses of the eligible individual or his or her dependents, or to purchase a health coverage policy certificate, or contract, if the eligible individual is receiving unemployment compensation, is exercising continuation privileges under federal law, is purchasing a long term care insurance contract, or to pay for health insurance other than a Medicare supplemental policy for those who are Medicare eligible. Funds held in a health savings account shall not be used to cover expenses of the eligible individual or his or her dependents that are otherwise covered, including but not limited to, medical expense covered pursuant to an automobile insurance policy, workers' compensation insurance policy or self-insured plan, or another employer-funded health coverage policy, certificate, or contract.

SECTION 5. (a) Notwithstanding subsections (c), (d), (e), or (f), an eligible individual may withdraw money from his or her health savings account for any purpose other than a purpose described in Section 4.

(b) Subject to subsection (c), if the eligible individual withdraws money for any purpose other than a purpose described in Section 4 at any other time, then such amounts shall be treated as otherwise provided by applicable law.

(c) The amount of disbursement of any assets of a health savings account pursuant to a filing for protection under Title 11 of the United States Code, 11 U.S.C. 101, et seq., by an eligible individual or person for whose benefit the account was established is not considered a withdrawal for purposes of this section. The amount of a disbursement is not subject to taxation under Tennessee Code Annotated, Title 67, Chapter 2.

(d) The transfer of an eligible individual's interest in a health savings account to an eligible individual's spouse or former spouse under a divorce or separation instrument shall not be considered a taxable transfer made by such eligible individual, notwithstanding any other provision of this act, and such interest shall, after such transfer, be treated as a health savings account with respect to which such spouse is the eligible individual.

(e) Upon the death of the eligible individual, the trustee or custodian shall distribute the principal and accumulated interest of the health savings account to the estate of the deceased.

(f) If an employee becomes employed with a different employer that participates in a health savings account program, the employee may transfer his or her health savings account to that new employer's trustee or custodian, or to an individually purchased account program.

SECTION 6. The U.S. Department of Treasury may make cost-of-living adjustments to dollar amounts for requirements for deductibles and out-of-pocket expenses in accordance with Internal Revenue Code Section 223. If such adjustments are made, then the corresponding amounts in Sections 2(e) and 2(f) will be considered to be increased to reflect such adjustments.

SECTION 7. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 8. The Commissioner of Revenue is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 9. Tennessee Code Annotated, Title 67, is amended by adding Sections 1 through 8 of this act, inclusive, as a new chapter to be appropriately designated.

SECTION 10. This act shall take effect July 1, 2006, the public welfare requiring it.

Passed: May 23, 2006

  
JOHN S. WILDER  
SPEAKER OF THE SENATE

  
JIMMY NAIFEH, SPEAKER  
HOUSE OF REPRESENTATIVES

APPROVED this 5th day of June 2006

  
PHIL BREDESEN, GOVERNOR